



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,629	12/12/2001	Wilhelm Rademacher	50061	9694

26474 7590 08/19/2004
KEIL & WEINKAUF
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 08/19/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,629

Applicant(s)

RADEMACHER ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-4 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 6 is/are allowed.
- 6) ☐ Claim(s) 1,2,4,7 and 8 is/are rejected.
- 7) ☐ Claim(s) 3 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

Detailed Action

Base on the Rejections cited below, application 10/009,629 has been withdrawn from issue.

Claim Rejection under 35 U.S.C. 112, 1st paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 7 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treating illnesses associated with human health, does not reasonably provide enablement for curing illnesses associated with human health. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make / use the invention commensurate in scope with these claims. The asserted utility is not believable on its face. It is not known how a method wherein a composition is claimed can be administered to cure illnesses associated with human health. The state of the art is what prior art knows about the invention. There is no known art wherein a certain composition is administered to successfully cure human health illnesses. The level of ordinary skill in the art is high but only in the art of treating illnesses associated with human health. The predictability or lack thereof in the art refers to the ability of one skilled in the art to

Art Unit: 1616

extrapolate the disclosed or known results to the claimed invention. The lower the predictability, the higher the direction and guidance that must be provided by the applicant. In the instant invention the predictability is very low and consequently, the need for the higher levels of direction and guidance by the applicant. However, the amount of direction and guidance provided by the applicant is limited to treatment. There is no evidence in the specification that established correlation between the experiment and the claimed utility. The quantity of experimentation required to use the method as claimed in the instant invention, based on applicant's disclosure would be undue because, one of ordinary skill in the art would have performed significant amount of experiments.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1,2,4,7 are rejected under 35 U.S.C. 102(b) as being anticipated by Basak et al. (Acta Horticulturae, 2000, 514 (Proceedings of the XXV International Horticultural Congress, 1998, Pt. 4). Basak teaches a method of applying a composition comprising prohexadione- Ca to plum, pear, and apple trees. See abstract. It is inherent that the

Art Unit: 1616

application of prohexadione-Ca onto plum trees would increase flavonoid and phenolic content in plum trees. See reference.

Claim 1,2,4,7,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Greene. (HortScience, 1999, vol. 34 no. 7, pp. 1209-1212. Green teaches a method of applying a composition comprising prohexadione-Ca to apple trees. See abstract. It is inherent that the application of prohexadione-Ca onto apple trees would increase flavonoid and phenolic content in plum trees. See reference.

Claim 1,2,4,7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ilan et al. (Plant Cell Reports, 1992, vol. 11 no. 5-6, pp. 304-9). Ilan teaches a method of applying a composition comprising prohexadione- Ca to carrot cell suspensions. See abstract. It is inherent that the application of prohexadione-Ca onto plum trees would increase flavonoid and phenolic content in carrot cell suspensions. See reference.

Claim Objection / Allowable Subject Matter

Claims 3,9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant method comprising grapevines. Claim 6 is allowable. The prior art does not teach or suggest the instant extract using grapes.

Telephonic Inquiry

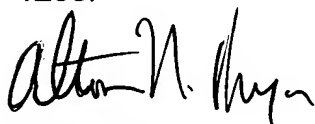
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-

1235.

A handwritten signature in black ink, appearing to read "Alton N. Pryor".

Alton Pryor
Primary Examiner
AU 1616